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It being impracticable to express in these columns the divergent views of the thousands of members of the American Peace Society, full responsibility for the utterances of this magazine is assumed by the Editor.

THE FUTILITY OF A FIAT CONSTITUTION.

DURING his short stay in America Viscount Grey remarked, in conversation, that our discussion over the proposed League of Nations resolves itself into a constitutional question. The distinguished gentleman was right. "Covenant," though it be called, Part I of the Treaty of Peace as framed in Paris is a world constitution; but, what is serious, it has all the appearance of a fiat constitution. It is as a voice in the darkness saying, "Let there be light." It is the result of one man commanding that it be done, and that with little reference to that seventeenth century saw which ran: "Fiat justitia, ruat cœlum." The significance of this aspect of the proposed Covenant of the League of Nations lies in the fact that fiat constitutions never have succeeded, and that therefore in all probability they never can.

When, in 1663, Charles II conferred on eight "Lords Proprietors" the territory in America lying between 31° and 36°, enlarged in 1665, and "extending to the Pacific Ocean," the Proprietors were granted palatine powers. They proceeded to divide the territory into two parts, North and South Carolina. For the government of this group a "Fundamental Constitution" was elaborately established, providing for three Orders of Nobility and four Houses of Parliament. This instrument, technically known as "The Fundamental Constitutions of Carolina, 1669," containing 120 separate paragraphs, was framed by no less a man than John Locke, author of "Two Treatises on Government," as well as of the "Essay concerning Humane Understanding." This very formidable document, drawn by such a distinguished philosopher, and amended indeed by Anthony Ashley Cooper, known later as the Earl of Shaftsbury, was only partially put into operation, and indeed it was abrogated by the Lords Proprietors in April, 1693. A careful reading reveals in its provisions no apparent reason for its cool reception or untimely end. Its aim to "avoid erecting a numerous democracy" did not militate against it. Yet neither the great learning of its chief author nor certain inherent merits of the document itself could save it as a practicable measure for that hardy and somewhat rude population, little interested in any sort of government. It was a perfect illustration of the futility of a fiat constitution.

In constitutional matters men see only by the lamp of experience. Governments are not established primarily upon abstract principles. The fate of more than one French "Constitution" shows that. How different from the Locke "Constitutions" and the Wilson "Covenant," both in inception and results, is that other outstanding international instrument of 1787, discerningly called by Alexander Hamilton "itself a Bill of Rights," the Constitution of the United States! In a remarkable essay, written in 1891, entitled *"The Genesis of a Written Constitution,"* Mr. William C. Morey truly said:

"In order to prepare the way still further for the proposition to be set forth in this article, it is necessary to say that the Federal Constitution is not only not a fiat constitution projected from the brain of the Fathers, nor a copy of the contemporary constitution of England; it is also not founded upon any previous body of institutions which existed merely in the form of customs. As it is itself primarily a body of written law, so it is based upon successive strata of written constitutional law."

Shortly before the great constitution-making epoch, Mr. Hume, in his essay on the *"Rise of the Arts and Sciences,"* wrote:

"To balance a large State or society, whether monarchical or republican, on general laws is a work of so great difficulty that no human genius, however comprehensive, is able, by mere dint of reason and reflection, to effect it. The judgments of many must unite in this work: Experience must guide their labor. Time must

bring it to perfection. And the feeling of inconveniences must correct the mistakes which they inevitably fall into in their first trials and experiments."

And Mr. James Harvey Robinson, writing in 1890, expressed the thought thus:

"In its chief features, then, we find our Constitution to be a skillful synthesis of elements carefully selected from those entering into the composition of the then existing State governments. The Convention 'was led astray by no theories of what *might* be good, but clave closely to what experience had demonstrated to *be* good.'"

It may be added that the quotation included by Mr. Robinson was from Mr. James Russell Lowell's address before the New York Reform Club, April 13, 1888.

One familiar with our written Constitution must agree that Mr. Gladstone was indulging in a sort of complimentary persiflage, when he courteously remarked that "the American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man," for, as we are now quite well aware, it was not "struck off at a given time." It represents, rather, the collective experiences of the preceding State constitutions, of the colonial charters which preceded them, of the charters of the still earlier trading companies themselves; indeed of a period of American political training much longer in point of time than that which has followed 1787.

What is also important in any consideration of the rise of constitutions is that constitutions cannot be imposed from above; they must evolve from within and from below. They were purely local causes, for example, which gave rise to the principle of representation in the Colony of Massachusetts. In 1631 it was ordered "that all swine found in any man's corn shall be forfeited to the public, and that the party damnified shall be satisfied." Two years later it was ordered "that it shall be lawful for any man to kill any swine that comes into his corn." These were simple, homely situations. But because of them twenty-four persons from the various towns in Massachusetts appeared, in 1634, before the General Court, and in their representative capacity demanded recognition. This led, significantly as we now see, to an arrangement whereby representatives were chosen by the freemen of the towns, with "the full power and voices of the said freemen." That was not only the beginning of representative government in Massachusetts; it represents a vital aspect of the development of our constitutional law. This is so because it was such simple needs, practical problems and methods of solution, that gave bent to those slow but significant steps on the part of the colonists up the long road to 1787. The background of our Federal Government spreads over a century prior to 1776. More than twenty "plans" of Union had been submitted during that time. Our Federal Constitution is thus more than an imitation, more than a product of ingenuity, more than the result of wars and of a revolution; in the language of Sidney George Fisher, it was the outgrowth of "natural conditions, many minds, many ages, and great searchings of heart."

It was neither custom nor historical precedent, but practical needs, expressing themselves in statutory law, that ultimately gave a written constitution to each of the colonies, and thence to the thirteen States. And out of similar needs and in a similar manner, growing indeed directly out of the State constitutions, and not the fiat of any man or body of men, was evolved, not "struck off," that noble instrument of 1787, upon which rests that great body of written laws which has given rise to constructive political liberty in America.

Since, thus, to be successful a constitution must represent the outgrowth of time and need and law, the inevitable fate of fiat constitutions has been defeat. The Covenant of the League of Nations, with its failure to distinguish between legislative, judicial, and executive functions; with its utter lack of reference to existing international situations and organs; with its creation out of pure theory, without any adequate reference to the local needs of peoples, is, we fear, such a fiat constitution. Its radical modification, if not its utter rejection by the United States, therefore, has from the beginning, from our point of view, been inevitable.

IS THERE A WAY OUT?

THE international situation facing the United States Senate will be settled by the Senate, for it is the duty of the Senate to do just that. But it will not be settled by the Senate until it is settled right. It will not be settled right if the decisions be made out of a desire simply to teach a lesson to the President of the United States. Neither can the matter be settled by false accusations against the Senate. The simple fact is that the Senate is faced with a concrete situation and a constitutional duty. The concrete situation is the Treaty of Peace; its constitutional duty is to give its "advice" and to give or withhold its "consent" to the ratification of that treaty. There can be no doubt that the Senate is as interested in performing its duty in the premises as are the rest of us.

Even the most radical opponents of the League of Nations would grant that the United States might well restrain its liberty of action for the benefit not of this so-called "League," but of the Society of Nations which already exists, and that in conformity with the demands of intelligent international public opinion. Mr. Knox,